



May 18, 2017

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

RE: Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42;  
Telecommunications Carriers Eligible for Universal Service Support,  
WC Docket No. 09-197; Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

USTelecom strongly supports Lifeline reform that is designed to modernize and improve the Lifeline program. In its 2016 order, the Federal Communications Commission (Commission) implemented several reforms designed to not only make the Lifeline program more effective, but also more administratively streamlined (Lifeline Order).<sup>1</sup> On June 23, 2016, USTelecom submitted to the Commission a Petition for Reconsideration of the Lifeline Order that raised several issues and concerns (USTelecom Petition).<sup>2</sup> Several of the issues raised in the USTelecom Petition remain outstanding, and the following ex parte notice discusses each of these issues.

**The Commission Should Eliminate its Changes to Rule 54.410 that Require the National Verifier to Send, and Providers to Obtain, Copies of Customer Certifications**

The Commission should eliminate the change in its rules that now require the National Verifier to send, and providers to obtain, copies of customer certifications. In addition to increasing the administrative burdens placed on providers of Lifeline services, the Commission's rule change conflicts with both the intent and the plain language of its Lifeline Order. The Lifeline Order clearly specifies that "[t]he National Verifier will retain eligibility information collected as a result of the eligibility determination process" and that "Lifeline providers will not

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<sup>1</sup> Third Report and Order, Further Report And Order, and Order on Reconsideration, *Lifeline and Link Up Reform and Modernization*, FCC 16-38, 31 FCC Rcd. 3962, 81 FR 33025 (2016) (*Lifeline Order*).

<sup>2</sup> USTelecom Petition for Reconsideration, WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90, June 23, 2016 (*USTelecom Petition*).

be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier.”<sup>3</sup>

Nevertheless, the adopted rule states that the “National Verifier, state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber’s eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the National Verifier, state Lifeline administrator or other state agency for that carrier’s subscribers.”<sup>4</sup> This rule change stands in direct opposition to the purpose of creating the National Verifier, which was intended to remove the providers from the eligibility determination process altogether.

In an instance where the National Verifier has made the initial determination of a subscriber’s eligibility, ETCs should not be required to maintain such documentation. There is no sound policy basis for setting up the National Verifier, only to continue to require providers to obtain and retain appropriate certifications. Such an approach runs counter to the purpose of the National Verifier regime, and will only perpetuate these burdensome retention and audit requirements. Moreover, the Commission’s approach undercuts its stated concerns in the Lifeline Order that the National Verifier directing USAC and others to “ensure that the National Verifier will incorporate robust privacy and data security best practices in its creation and operation of the National Verifier.”<sup>5</sup> Requiring ETCs to remain redundant – and unnecessary – copies of consumer information runs counter to ensuring “robust privacy and data security best practices. The Commission should therefore remove this obligation from ETCs.

USTelecom previously noted in its Petition that the changes may simply be the result of an administration oversight.<sup>6</sup> In any case, because the rule changes conflict with both the intent and the plain language of the Order, USTelecom requests that the Commission reconsider them and reverse the changes.

### **The Commission Should Revise its Document Retention Requirements after Implementation of the National Verifier**

The Commission should also amend its rules to specify that a provider is not required to retain any eligibility or recertification information for any subscriber for more than three years after the National Verifier has first recertified such subscriber. The Commission’s Lifeline Order

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<sup>3</sup> *Lifeline Order*, ¶ 151.

<sup>4</sup> *Id.*, Appendix A, 47 C.F.R. § 54.410(e).

<sup>5</sup> *Lifeline Order*, ¶ 154.

<sup>6</sup> *USTelecom Petition*, pp. 10 – 11.

states that ETCs will not need to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier.<sup>7</sup>

However, the Commission's existing rules require ETCs to maintain records to document compliance with all Commission and state requirements governing Lifeline, and specifically require ETCs to retain the documentation related to eligibility and recertification. Specifically, documents must be retained for as long as the subscriber receives Lifeline service from that ETC, but for no less than the three full preceding calendar years.<sup>8</sup> In addition to running counter to the Commission's stated intention that ETCs will not need to retain eligibility documentation for Lifeline BIAS subscribers, the requirement also conflicts with the concerns raised previously regarding the privacy of Lifeline subscriber information.<sup>9</sup> The Commission should therefore amend rule 54.417 to reflect elimination of such a retention requirement.

As noted in the USTelecom Petition, because the National Verifier will also be conducting recertification, once it has recertified a subscriber, it has in effect determined that the subscriber is eligible, and the provider should no longer have an obligation to retain the subscriber's past eligibility documentation, even if the provider made the initial eligibility determination for the subscriber. If the extended document retention requirement is not eliminated, an ETC could be left retaining documents years after a subscriber enrolled, simply because the subscriber has stayed with the same provider, and despite the fact that the National Verifier has taken over determination of the subscriber's continuing eligibility. The Commission should, at a minimum, amend its rules to specify that a provider is not required to retain any past eligibility or recertification information for any subscriber for more than three years after the National Verifier has first recertified such subscriber.

### **ETCs Should be Afforded the Flexibility to Make Material Changes to Service Plans**

As a threshold matter, USTelecom is not objecting to the port freeze requirement adopted in the Lifeline Order. However, the Commission should reconsider that portion of the Lifeline Order that prohibits ETCs from making material change of service plans for twelve months. As noted in the USTelecom Petition, the Commission's adoption of a prohibition on provider's materially changing initial terms or conditions of a Lifeline BIAS offering without the consent of the subscriber for the first twelve months of service, suffers from the lack of notice required under the Administrative Procedures Act (APA).

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<sup>7</sup> *Lifeline Order*, ¶ 151.

<sup>8</sup> 47 C.F.R. §54.417.

<sup>9</sup> *Lifeline Order*, ¶ 154 (directing USAC, the Office of Managing Director and its Office of the Chief Information Officer (OCIO) to "ensure that the National Verifier will incorporate robust privacy and data security best practices in its creation and operation of the National Verifier.").

As noted by Chairman Pai in his dissent, there was no notice whatsoever provided in the underlying notice regarding this material change to Lifeline administration. No such prohibition was hinted at in the underlying rulemaking, and commenters had no opportunity to react to such a prohibition.

Limiting a provider's ability to make changes to a rate plan for all customers on that rate plan imposes additional administration requirements and complexity by, for example, expecting a carrier to roll out changes based on the service anniversary dates of its existing subscribers. This is particularly problematic for companies who do not offer specific Lifeline products but rather allow customers to apply the Lifeline discount to any qualifying product the company offers.

In addition, the current rule could prevent a Lifeline ETC from changing plans for all consumers, or at least constrain them from doing so. In today's competitive marketplace, this could mean consumers do not receive lower prices or better bundles than they otherwise might. Such an approach could also prevent Lifeline providers from responding to the market and could ultimately discourage BIAS providers from participation in the Lifeline program altogether. The Commission should therefore reconsider this aspect of its rules, and permit Lifeline BIAS providers to institute such changes.

#### **The Commission Should Eliminate its Requirement that the Last Lifeline Provider in a Census Block Must Continue to Offer Voice Lifeline Service**

The Commission should also eliminate its requirement that the last Lifeline BIAS provider in a census block must continue to offer Lifeline service. As noted in the USTelecom Petition, the market for voice services is highly competitive, and there is no reason for the Commission to impose this obligation on ETCs.

Among other things, the Commission noted in its Lifeline Order that non-Lifeline voice rates have fallen "drastically" since the 2012 Lifeline Reform Order.<sup>10</sup> The Commission also noted the overall decline in the marketplace of voice services, and that cost decreases outside the Lifeline program have "led to a large variety of reasonably priced voice options."<sup>11</sup> Moreover, the Lifeline Order acknowledges that many wireless companies operate with no ETC designation and offer voice service in areas where other providers are ETCs. As such, the Commission's decision to retain support and a Lifeline voice obligation for those ETCs who happen to be the only ETC in a particular census block is arbitrary and capricious.

In addition, regardless of whether the Commission grants reconsideration on this issue, it should reconsider a disparity in its new rule 54.401(b)(4), which states that commencing on

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<sup>10</sup> *Lifeline Order*, ¶ 54.

<sup>11</sup> *Id.*, ¶ 55.

Dec. 1, 2021, ETCs must provide the “minimum service levels for broadband Internet access service in every Lifeline offering.”<sup>12</sup> This requirement conflicts with the Commission’s decision to apply a voice-only Lifeline offering in Census blocks with only one Lifeline provider. In such areas where the single ETC is providing only Lifeline voice service, it cannot be expected to meet “minimum service levels for broadband Internet access service” in its “Lifeline offering.” Even absent grant of reconsideration on this broader single ETC issue, the FCC must address this discrepancy in its rules.

### **The Commission Should Delete Section 54.403(b)(1) of its Rules**

As addressed in the USTelecom Petition, the Commission should also delete rule 54.403(b)(1), since it is no longer relevant in the reformed Lifeline program. The specified rule addresses ETC accounting measures solely for voice-centric services which are being phased out under the Commission’s Lifeline Order. Specifically, Rule 54.403(b) sets out the manner in which Lifeline support must be passed through to the consumer.

The Commission’s Lifeline Order, however, changed the Lifeline program to permit application of the credit to broadband only services. Since broadband services do not have a Federal Subscriber Line charge or intrastate service to which credit could be applied, the rule is no longer relevant or necessary. As such, the Commission should grant USTelecom’s request that it be eliminated.

### **The Commission Should Reconsider its Clarification of “Media of General Distribution”**

The Commission should also reconsider its clarification regarding “Media of General Distribution” and make clear that the advertising requirement for any provider of Lifeline broadband Internet access service is media reasonably calculated to reach “the specific audience that makes up the demographic for a particular service offering.” In its Lifeline Order, the Commission clarified the term to mean any media reasonably calculated to reach the general public. However, it indicated that for a Lifeline BIAS provider, it means media reasonably calculated to reach “the specific audience that makes up the demographic for a particular service offering.”<sup>13</sup> As addressed in the USTelecom Petition, there is no logical reason for Commission to narrowly apply that interpretation only to Lifeline BIAS providers or Lifeline-only broadband ETCs.

For example, a high-cost ETC providing widespread voice service might still be obligated to reach the general public, but if that same ETC is also providing Lifeline broadband, it could well have a smaller or more discrete service area for its broadband offering as a result of forbearance. To require a high-cost ETC to advertise a broadband service that is not broadly

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<sup>12</sup> See, 47 C.F.R. §54.401(b)(4). See also, *Lifeline Order*, Appendix A, p. 167.

<sup>13</sup> *Lifeline Order*, ¶ 364.

available will cause confusion and dissatisfaction among consumers who seek the service, only to find it is not available. The Commission's adopted approach will also create inefficiency and increased costs for carriers who have to field inquiries from potential customers outside of their Lifeline broadband service area. The Commission should therefore reconsider its clarification of "Media of General Distribution" consist with the request in the USTelecom Petition. Specifically, the Commission should reconsider its clarification and make clear that the advertising requirement for any provider of Lifeline broadband Internet access service is media reasonably calculated to reach "the specific audience that makes up the demographic for a particular service offering."<sup>14</sup>

### **The Commission Should Correct Section 54.101 of its Rules to Align it With the Lifeline Order**

Finally, the Commission should correct an erroneous aspect of its amended rule 54.101, which does not comport with the Commission's broader changes adopted in its Lifeline Order. Specifically, in its Lifeline Order, the Commission is clear that it is adding BIAS as a supported service for purposes of the Lifeline program, and that it is a supported service only in that context. However, it fails to make that distinction clear in rule 54.101(a), which it amends to include variously "broadband" or "broadband Internet access service" as a supported service without any limitation as to its context. The placement of broadband Internet access service in rule 54.101 is in error, as that section is reserved (as indicated by its section heading) for "[s]upported services for rural, insular and high cost areas." As such, only those supported services that are part of a high-cost program belong in rule 54.101.

Further, there are state regulations that incorporate by reference the supported services in rule 54.101 for purposes of state programs, which might result in unintended consequences for existing state programs that lack jurisdiction over an interstate service like BIAS. To address both of these issues, the Commission should delete the references to "broadband" and "broadband Internet access service" in 54.101(a). Those references are unnecessary in light of the amendment to rule 54.400, which defines both Voice Telephony and BIAS as supported services for the Lifeline program. The USTelecom Petition proposes specific language that the Commission should adopt in order to rectify this error.

While USTelecom believes that the Commission should make Lifeline broadband participation voluntary for all carriers, at a minimum, together with the amendment to rule 54.101, the Commission also should clarify that an ETC may avail itself of the Order's Lifeline broadband forbearance relief for all locations in its ETC service area except those locations where it is commercially offering qualifying BIAS pursuant to its obligations under the Commission's high-cost rules (*i.e.*, to those locations that the ETC is reporting toward its CAF II broadband obligation). Once that ETC's high-cost broadband public interest obligations end, so too does its Lifeline broadband service obligation.

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<sup>14</sup> *Id.*

Ms. Marlene H. Dortch  
May 18, 2017

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USTelecom appreciates the Commission's reforms to the Lifeline program. In order to further modernize and improve the Lifeline program, the Commission should grant the relief requested in the USTelecom Petition as detailed herein.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Kevin G. Rupy", with a stylized flourish at the end.

Kevin G. Rupy  
Vice President, Law & Policy